

## REMARKS

Applicants respectfully request further examination and reconsideration in view of the instant response. Claims 1-20 remain pending in the case. Claims 1-20 are rejected.

Independent Claims 1, 8 and 15 have been amended. No new matter has been added. For example, support for the amendments to independent Claims 1, 8 and 15 can be found in the instant application serial no. 10/637,172 at originally filed independent Claim 1, last 3 sentences on page 14, page 14 lines 13-18, last sentence on page 14 through line 2 on page 15, page 15 last paragraph, and last sentence on page 14 through line 2 on page 15, among other places in the originally filed instant application.

## IMPROPER TO MAKE NEXT OFFICE ACTION FINAL

MPEP 2144.04 (D) states, "If...a new ground of rejection is introduced by the examiner that is not necessitated by applicant's amendment of the claims, the rejection may not be made final. See MPEP 706.07(a)." Claims 1, 8 and 15 were not amended to get over the asserted art. Therefore, Applicants respectfully submit that although Applicants amended Claims 1, 8 and 15, should the following arguments be found to be persuasive, Applicants respectfully submit that it would be improper to make the next Office Action final.

## 35 U.S.C. 112, 1<sup>st</sup> PARAGRAPH

The Office Action rejected Claims 1-20 under 35 U.S.C. 112, first paragraph. 35 U.S.C. 112, 1<sup>st</sup> paragraph states,

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same,...

The Office Action states, "... there is no disclosure of the registering being done by the application that was brought up." Applicants' respectfully submit that the Office Action has misquoted the embodiments recited by independent Claims 1, 8 and 15. For

example, independent Claims 1, 8 and 15 recite, “which was created when an application registered a service provided by the application with said port mapper at the time said application was brought up” not “the registering being done by the application that was brought up.”

Support for the amendments to Claims 1, 8, and 15, that are rejected herein under 35 U.S.C. 112, first paragraph, can be found in the instant application serial no. 10/637,172 at originally filed independent Claim 1, last 3 sentences on page 14, page 14 lines 13-18, last sentence on page 14 through line 2 on page 15, page 15 last paragraph, and last sentence on page 14 through line 2 on page 15, among other places in the originally filed instant application. For example, the instant application states on page 15 lines 12-21,

RPC, in implementations envisioned in these embodiments, provides support for authenticating a calling program on one device to a target subroutine on another. Authentication can operate in several different modes. It is noted that RPC allows services freedom from being tied to a given port number. It does so using a special RPC service called PORTMAPPER or RPC bind. These binding protocols, often referred to as the portmapper, are unique among RPC services since they have an assigned port of their own (port 111). Other RPC services, running on any port number, can register themselves using an RPC call to port 111. The portmapper offers other RPC calls to permit service lookup (emphasis added).

The instant application also states at page 14 lines 13-15, “The port binding of a particular application, when the application is brought up, is able to be bound to a Portmapper and its services are born on a particular port” (emphasis added). The instant application further states starting at the last sentence of page 14 through page 15 line 2, “Then these embodiments are enabled to query the portmapper in order to verify whether the identified services are in fact using the authorized port” (emphasis added). Therefore, Applicants respectfully submit that the instant application does provide explicit support for “accessing port binding information, which includes an identification and an authorized port of an authorized service, in a port authorization file in said network; querying a port mapper for a mapped port assignment, which was created when an application registered a service provided by the application with said port mapper at the time said application was brought up, said mapped port assignment

includes a current port used by said registered service; determining if an identified service is currently using said authorized port by comparing said mapped port assignment to said port binding information,” as recited by independent Claim 1. Independent Claims 8 and 15 recite similar features.

Therefore, Applicants respectfully submit the embodiments of independent Claims 1, 8 and 15 comply with the requirements of 35 U.S.C. 112, first paragraphs for at least the reasons, as described herein, that the instant specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same.

Further, Applicants respectfully submit that MPEP2163.04 states “The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant’s disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97” (emphasis added). Therefore, Applicants respectfully request that if future Office Actions rejection claims under 35 U.S.C. 112, first paragraph, that the future Office Actions accompany the rejections with a preponderance of evidence as to why a person skilled in the art would not recognize in Applicants’ disclosure a description of the invention defined by the claims

#### 35 U.S.C. 112, 2<sup>nd</sup> PARAGRAPH

The Office Action rejected Claims 1-20 under 35 U.S.C. 112, second paragraph. Independent Claims 1, 8 and 15 have been amended to address the antecedent basis problems indicated in the Office Action. Therefore, Applicants believe that these rejections have been addressed.

#### 35 U.S.C. 101

The Office Action rejected Claims 1-14 under 35 U.S.C. 101. Applicants have amended independent Claim 1 to recite “accessing, performed by a computer system”

and have amended independent Claim 8 to recite “a port assignment file, stored in an electronic device,” Therefore, Applicants respectfully submit that independent Claims 1 and 8 are tied to statutory subject matter. Claims 2-7 depend on independent Claim 1. Claims 9-14 depend on independent Claim 8. These dependent claims include all of the features of their respective independent base claims. Therefore, these dependent claims recite statutory subject matter for at least the reasons that their respective independent base claims include statutory subject matter.

#### AMENDMENTS TO THE SPECIFICATION

Applicants have amended the specification to provide antecedent basis for the term “electronic device” and “computer system.” MPEP 608.01(o) states,

The meaning of every term used in any of the claims should be apparent from the descriptive portion of the specification with clear disclosure as to its import...

...While an applicant is not limited to the nomenclature used in the application as filed, he or she should make appropriate amendment of the specification whenever this nomenclature is departed from by amendment of the claims so as to have clear support or antecedent basis in the specification for the new terms appearing in the claims. This is necessary in order to insure certainty in construing the claims in the light of the specification, *Ex parte Kotler*, 1902 C.D. 62, 95 O.G. 2684 (Comm’r Pat. 1901). See 37 CFR 1.75, MPEP §608.01(i) and §1302.01.

Support for these amendments can be found in the instant application in the last three lines on page 8, among other places.

#### 35 U.S.C. 102

On page 4, the Office Action rejected Claims 1-6, 8-11, 14-18 and 20 as being anticipated under 35 U.S.C. 102(a) by U.S. Patent Application Publication No. 2002/0144156 by Copeland III et al. (referred to hereinafter as “Copeland”). Applicants have reviewed the asserted art and respectfully submit that Copeland does not teach and the embodiment recited by amended independent Claim 1 for at least the following rationale.

## COPELAND

This section describes Applicants' understanding of what Copeland teaches. Copeland teaches creating a host port profile based on ports from TCP headers that are analyzed for a period of time (0067, 0069, 0070, 0074) because "[i]nitially a network administrator may not know all the client and server applications that are running on their network" (0069). The ports that are obtained over a period of time and thus part of the host port profile are considered to be "normally used ports." Further, "... the services are automatically updated in the profile" (0069). The network administrator can subsequently modify the ports in the host port profile (last sentence of 0022). After Copeland has created a host port profile that is "accurate" because it includes ports that were normally used during the period of time," Copeland teaches collecting ports from observed TCP headers (referred to herein as "observed ports") into flow data structures and comparing his "observed ports" to the "normally used ports" in his host port profile to determine if the services associated with the observed ports are normally used or not normally used (abstract, 0062-0064, 0066, 0157). More specifically, if the observed ports are found in his host profile they are "in profile" and are considered "normally used." If the observed ports are not in his host port profile, they are "out of profile" and are considered "not normally used."

## DIFFERENCES BETWEEN COPELAND AND CLAIM 1

This section describes Applicants' understanding of at least some of the differences between what Copeland teaches and the embodiment recited by amended independent Claim 1.

MPEP §2131 provides:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

Applicants respectfully submit that Copeland does not teach the embodiment recited by amended independent Claim 1 for at least the following rationale.

Applicants note that the board's decision dated February 25, 2010 drew a comparison between Copeland's automatic build up of normally used ports in his post port profile based on analyzed TCP header information to "querying a port mapper for a mapped port assignment." Applicants do not understand Copeland's automatic build up of the host profile ports (also referred to herein as "normally used ports") that are included in his host port profile based on TCP headers that are analyzed over a period of time (0067, 0069, 0070, 0074) to teach "a map port assignment, which was created when an application registered a service provided by the application at the time the application was brought up," "registered a service," and "a current port used by said registered service," as recited by independent Claim 1. For example, Applicants do not understand Copeland's automatic build up of normally used ports based on analyzed TCP header information to teach "registered." Further, Applicants do not understand Copeland's service associated with a port that is deemed to be "normally used" based on analyzing TCP headers over a period of time to teach "a registered service." Further, Copeland's host profile ports are used to determine if his "observed ports" are "in profile" (e.g., "normally used") or "out of profile (e.g., "not normally used"). Therefore, Applicants do not understand Copeland's host profile ports to teach "a current port used by said registered service."

Applicants do not understand Copeland's ports that are observed (observed ports) from TCP header information to teach "authorized port and authorized service" or to teach "registered service." For example, Copeland's observed ports are not the ports that are in his host port profile. Instead, Copeland teaches determining whether his "observed ports" are "in profile" (e.g., "normally used") or "out of profile (e.g., "not normally used") by comparing the observed ports to his post port profile. Further, Copeland's observed port/service may be "normally used" or "not normally used," therefore, Applicants do not understand Copeland's observed port/service to teach a either "authorized port and authorized service" or "registered service."

Therefore, Applicants do not understand Copeland to teach “accessing port binding information, which includes an identification and an authorized port of an authorized service, in a port authorization file in said network; querying a port mapper for a mapped port assignment, which was created when an application registered a service provided by the application with said port mapper at the time said application was brought up, said mapped port assignment includes a current port used by said registered service; determining if an identified service is currently using said authorized port by comparing said mapped port assignment to said port binding information,” as recited by independent Claim 1.

#### THE OFFICE ACTION'S ASSERTIONS

The Office Action states in the last sentence under bullet 2 on page 7, “In each Mode, new services are automatically detected, including ‘current activities’. This implies that if an application which was just brought up registers a service and a new port is mapped for that service, port profile engine 155 would detect the new mapped port assignment in the “seen today list.” Applicants respectfully submit that during Modes 1 and 2 (0070 and 0071) that ports are automatically added to Copeland’s profile based on analyzed TCP information during the period of time that modes 1 and 2 are used, as described herein, and deemed to be “normally used ports.” In mode 3 (0072) ports are not added. In mode 4 (0073) an alarm is generated if an observed port is not found in the profile (e.g., the ports that have been deemed during modes 1 and 2 as “normally used”). Therefore, the services that are observed during Copeland’s modes 1-4 do not teach or suggest “accessing port binding information, which includes an identification and an authorized port of an authorized service, in a port authorization file in said network; querying a port mapper for a mapped port assignment, which was created when an application registered a service provided by the application with said port mapper at the time said application was brought up, said mapped port assignment includes a current port used by said registered service; determining if an identified service is currently using said authorized port by comparing said mapped port assignment to said port binding information.”

Further, even if an observed port is associated with an application that has just been brought up, this does not mean that Copeland teaches “querying a port mapper for a mapped port assignment, which was created when an application registered a service provided by the application with said port mapper at the time said application was brought up, said mapped port assignment includes a current port used by said registered service.” Instead, Applicants understand Copeland to teach that ports for services that are not in Copeland’s profile will be deemed as “unauthorized”: and an alarm will be generated (0073 and last sentence of 0123).

The Office Action states, “This implies that if an application which was just brought up registers a service and a new port is mapped for that service.” However, Copeland does not teach that an application which was just brought up registers a service and a new port is mapped for that service. Instead, Applicants understand Copeland to teach that ports from TCP headers that are analyzed during the build up period (0069-0071) are deemed to be “normally used” and are therefore added to Copeland’s profile. After the build up period, the “seen today” structure (also referred to as “current activity”) is used to collect observed ports (0064, second to last sentence of 0123). This current activity is then compared to the profile to determine if any of the ports in the current activity are “not normally used.” Therefore, Applicants respectfully submit that one of Copeland’s services that is a part of a “new activity” is not “registered” and is not automatically a part of Copeland’s profile. Applicants respectfully submit that Copeland does not teach registering services.

The Office Action appears to especially rely on paragraph 0123. More specifically, Applicants understand Copeland to teach at 0123 that there is a client at IP ADDRESS 1 requesting a service from a server at IP ADDRESS 2. The service is not a new service. Instead, it is an HTTP service, which is a well known service that is “normally used.” Since it is normally used, there is a high probability that it would be included in Copeland’s profile during mode 1 and 2 (0064, 0069-0071). Returning to 0123, the server is using a low port 80 for HTTP that is preassigned and predetermined.



The client is using random high ports 51, 132. The port profiling engine updates both ADDRESS1 as the client utilizing port 80 and ADDRESS 0 as the server utilizing port 80. Then a comparison can be made to determine if there is any unauthorized network usage. Therefore, Applicants respectfully submit that Copeland does not teach or suggest “accessing port binding information, which includes an identification and an authorized port of an authorized service, in a port authorization file in said network; querying a port mapper for a mapped port assignment, which was created when an application registered a service provided by the application with said port mapper at the time said application was brought up, said mapped port assignment includes a current port used by said registered service; determining if an identified service is currently using said authorized port by comparing said mapped port assignment to said port binding information,” at 0123.

#### SUMMARY

As discussed herein, Applicants respectfully submit that the embodiment recited by independent Claim 1 is patentable for at least the reasons that Applicants do not understand Copeland to teach “accessing port binding information, which includes an identification and an authorized port of an authorized service, in a port authorization file in said network; querying a port mapper for a mapped port assignment, which was created when an application registered a service provided by the application with said port mapper at the time said application was brought up, said mapped port assignment includes a current port used by said registered service; determining if an identified service is currently using said authorized port by comparing said mapped port assignment to said port binding information,” as recited by independent Claim 1. For similar reasons, Applicants respectfully submit that Copeland does not teach the embodiments recited by independent Claims 8 and 15.

Claims 2-7 depend on independent Claim 1. Claims 9-14 depend on independent Claim 8. Claims 16-20 depend on independent Claim 15. These dependent claims include all of the features of their respective independent base

claims. Therefore, these dependent claims should be patentable for at least the reasons that their respective independent base claims should be patentable.

### 35 U.S.C. 103

On page 8, the Office Action rejected Claims 7, 12, and 1 as being obvious under 35 U.S.C. 103(a) in view of Copeland and further in view of U.S. Patent No. 6,988,208 by Hrabik et al. (referred to hereinafter as “Hrabik”). Applicants have reviewed the asserted art and respectfully submit that neither Copeland nor Hrabik teach or suggest and the embodiment recited by amended independent Claim 1 for at least the following rationale.

“As reiterated by the Supreme Court in KSR, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141(II)). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)).

### NO MOTIVATION TO COMBINE

This section describes Applicants’ understanding of at least some of the reasons why there is no motivation to combine Copeland with any other asserted art, such as Hrabik, because Applicants understand Copeland to teach away from the embodiment recited by amended independent Claim 1.

Applicants respectfully submit that “[i]t is improper to combine references where the references teach away from their combination” (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). Applicants respectfully note that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S.

851 (1984)). Further, “[A] reference will teach away if it suggests that the line of development flowing from the reference’s disclosures is unlikely to be productive of the result sought by the applicant. *In re Gurley*, 31 USPQ2d 1130 (Fed. Cir. 1994).” More specifically, Applicants respectfully submit that there is no motivation to combine Copeland with any other asserted art, such as Hrabik, because Applicants understand Copeland to teach away from the embodiment recited by amended independent Claim 1 for at least the following rationale.

Applicants note that the board’s decision dated February 25, 2010 drew a comparison between Copeland’s automatic build up of ports in his host port profile to “querying a port mapper for a mapped port assignment.” Applicants understand Copeland’s automatic build up of the “normally used ports” (also referred to herein as “host profile ports”) that are included in his host port profile based on TCP headers that are analyzed over a period of time (0067, 0069, 0070, 0074) to teach away from “a map port assignment, which was created when an application registered a service provided by the application at the time the application was brought up,” “registered a service,” and “a current port used by said registered service,” as recited by independent Claim 1. For example, Applicants understand normally used ports that are determined using automatic build up over a period of time based on analyzed TCP header information to teach away from “registered.” Further, Applicants understand a service that is determined to be associated with a normally used port based on TCP headers analyzed over a period of time to teach away from “a registered service.” Further, Copeland’s host profile ports (e.g., “normally used ports”) are stored in Copeland’s host port profile and are used to determine if his “observed ports” are “in profile” (e.g., “normally used”) or “out of profile” (e.g., “not normally used”). Therefore, Applicants understand Copeland’s host profile ports to teach away from “a current port used by said registered service.”

Applicants understand Copeland’s ports that are observed (observed ports) from TCP header information to teach away from “authorized port and authorized service” and teach away from “registered service.” For example, Copeland’s observed ports are

not the normally used ports that are in his host port profile. Instead, Copeland teaches determining whether his “observed” are “in profile” (e.g., “normally used ports”) or “out of profile” (e.g., “not normally used ports”). Further, Copeland’s observed port/service, which may be either normally used or not normally used, does not teach a “registered service.” Therefore, Applicants understand Copeland’s ports that are observed from his TCP headers to teach away from “authorized port and authorized service” and to teach away from “registered service.”

Therefore, Applicants understand Copeland to teach away from “accessing port binding information, which includes an identification and an authorized port of an authorized service, in a port authorization file in said network; querying a port mapper for a mapped port assignment, which was created when an application registered a service provided by the application with said port mapper at the time said application was brought up, said mapped port assignment includes a current port used by said registered service; determining if an identified service is currently using said authorized port by comparing said mapped port assignment to said port binding information,” as recited by independent Claim 1.

#### SUMMARY

Therefore, Applicants respectfully submit that the embodiment recited by independent Claim 1 is patentable for at least the reasons, as discussed herein, that Applicants believe that there is no motivation to combine Copeland with any other asserted art, such as Hrabik, for at least the reasons that Applicants understand Copeland to teach away from “accessing port binding information, which includes an identification and an authorized port of an authorized service, in a port authorization file in said network; querying a port mapper for a mapped port assignment, which was created when an application registered a service provided by the application with said port mapper at the time said application was brought up, said mapped port assignment includes a current port used by said registered service; determining if an identified service is currently using said authorized port by comparing said mapped port assignment to said port binding information,” as recited by independent Claim 1. For

similar reasons, Applicants respectfully submit that Copeland does not teach the embodiments recited by independent Claims 8 and 15.

Claim 7 depends on independent Claim 1. Claim 12 depends on independent Claim 8. Claim 19 depends on independent Claim 15. These dependent claims include all of the features of their respective independent base claims. Therefore, these dependent claims should be patentable for at least the reasons that their respective independent base claims should be patentable.

35 U.S.C. 103

On page 9, the Office Action rejected Claim 13 as being obvious under 35 U.S.C. 103(a) in view of Copeland and further in view of U.S. Patent No. 6,134,591 by Nickles (referred to hereinafter as "Nickles"). Applicants have reviewed the asserted art and respectfully submit that neither Copeland nor Nickles teach or suggest and the embodiment recited by amended independent Claim 1 for at least the following rationale.

As presented herein, Applicants understand Copeland to teach away from the embodiment recited by independent Claim 1. Since Copeland teaches away from the embodiment recited by independent Claim 1, Nickles cannot overcome the deficiency in Copeland because there is no motivation to combine Copeland with any other asserted art, such as Nickles.

For at least these reasons, independent Claim 1 should be patentable over Copeland in view of Nickles. For similar reasons, independent Claim 8 should also be patentable over Copeland in view of Nickles. Claim 13 depends on independent Claim 8 and includes all of the features of independent Claim 8. Therefore, Claim 13 should be patentable for at least the reasons that independent Claim 8 should be patentable.

### CONCLUSION

Based on the arguments presented above, Applicants respectfully assert that Claims 1-20 overcome the rejections of record and, therefore, Applicants respectfully solicit allowance of these Claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

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